

# Friedmann

## *EXHIBIT A*

**In The Matter Of:**

*In Re Sears  
Holdings*

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*Kunal Kamlani  
June 20, 2019*

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*Min-U-Script® with Word Index*

1  
2     UNITED STATES BANKRUPTCY COURT  
3     SOUTHERN DISTRICT OF NEW YORK  
4     Chapter 11 - Case No. 18-23538 (RDD)

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6     **In Re:**  
7     **SEARS HOLDINGS CORPORATION, et al.,**  
8                   **Debtors.**  
9 -----

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11  
12                   **DEPOSITION OF KUNAL KAMLANI**

13  
14                   **Thursday, June 20, 2019**  
15                   **10:00 a.m.**

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21     **Reported by:**  
22     **Joan Ferrara, RMR, FCRR**  
23     **Job No. 2019-72624a**

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2                  June 20, 2019  
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4                  10:00 a.m.  
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7                  New York, New York

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Deposition of KUNAL KAMLANI, held  
at the offices of Cleary Gottlieb Steen &  
Hamilton, 450 Park Avenue, New York, New  
York, before Joan Ferrara, a Registered  
Merit Reporter, Federal Certified Realtime  
Reporter and Notary Public of the State of  
New York.

1  
2       **A P P E A R A N C E S:**

3  
4       **Attorneys for the Witness:**

5       **HOLWELL SHUSTER & GOLDBERG, LLP**

6               **425 Lexington Avenue**

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8       **BY:           MATTHEW GURGEL, ESQ.**

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18  
19  
20  
21  
22  
23  
24               **(Continued)**

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2       **A P P E A R A N C E S: (Continued)**

3

4       **Attorneys for Debtors and**

5       **Debtors-in-Possession: Sears Holdings**

6       **Corporation, et al.:**

7       **WEIL GOTSHAL & MANGES, LLP**

8               **767 Fifth Avenue**

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18       **Attorneys for ESL Investments, Inc.:**

19       **CLEARY GOTTLIEB STEEN & HAMILTON, LLP**

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21               **New York, New York 10006**

22      **BY: LEWIS LIMAN, ESQ.**

23               **lliman@cgsh.com**

24

25               **(Continued)**

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2      **A P P E A R A N C E S:**    (Continued)

3

4      **ALSO PRESENT:**5                **EMILY MORROW, Cleary Summer**6                **Associate**7                **GABRIELLE KANTER, Weil Summer**8                **Associate**9                **BRIAN GRIFFITH, M-III**10               **JOSEPH FRANTZ, M-III**

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2       K U N A L    K A M L A N I ,

3                 called as a witness, having been duly  
4                 sworn by a Notary Public, was examined  
5                 and testified as follows:

6       EXAMINATION BY

7       MS . CROZIER:

8       Q.      Good morning, Mr. Kamlani.

9       A.      Good morning.

10      Q.      You met me a few minutes ago. My  
11     name is Jennifer Crozier. I'm from Weil  
12     Gotshal & Manges, and I represent the  
13     Debtors in connection with these cases.

14     Thank you for your time this morning.

15                 Now, I know you've been deposed  
16     before because I actually sat in on your  
17     January deposition in connection with these  
18     cases, but nevertheless I'm going to run  
19     through some of the deposition ground  
20     rules.

21                 Okay?

22      A.      Perfect.

23      Q.      So first, you've just been sworn  
24     in and so you understand that you are to  
25     tell the truth, the whole truth and nothing

1                   K. Kamlani

2       below to the definition of "other  
3       payables," that definition reads as  
4       follows:

5                   "Other payables shall mean the  
6       accounts payable set forth on Schedule  
7       1.1G."

8                   Do you see that?

9       A.     I do.

10      Q.     Would you agree with me,  
11     Mr. Kamlani, that ordered inventory and  
12     other payables are defined separately in  
13     the APA?

14      MR. LIMAN: I'm going to object  
15     to the extent it calls for legal  
16     conclusions.

17                  You can go ahead.

18      A.     Can we look at Schedules 1.1G  
19     and -- what was the other one, 1.1F, was  
20     it?

21      Q.     F. We're going to look at those  
22     schedules in a moment. Right now I'm  
23     asking you about page 24 of the Asset  
24     Purchase Agreement. I'm asking you whether  
25     ordered inventory and other payables are

1 K. Kamiani

2 A. If you're asking me are these two  
3 separate sentences in the APA, the answer  
4 is yes, because to the naked eye they're  
5 two separate sentence.

6 If you're asking me are they two  
7 different concepts, they are not.

8 Q. That's not what I'm asking you.

9 MS. CROZIER: So objection to the  
10 nonresponsive portion of that answer.

A. What was the responsive portion?

12 Q. To the naked eye, Mr. Kamlani,  
13 you would also agree that these are two  
14 separate definitions.

15 A. They are two separate sentences  
16 on the page, yes.

17 Q. And two separate definitions as  
18 well, correct?

19 A. Yes.

20 MS. CROZIER: Mark this Kamiani  
21 Exhibit 3, please.

22 (Kamlani Exhibit 3, Schedule

23        1.1F, marked for identification, as of  
24        this date.)

25 BY MS. CROZIER:

1                   K. Kamlani

2       A.     Correct.

3       Q.     And if you will flip the page on  
4     that exhibit, you will see Annex 9.

5                   Do you see that?

6       A.     I do.

7       Q.     Can you read Annex 9 to me,  
8     please?

9       A.     I'm assuming it's Annex 9. It  
10    doesn't say Annex 9.

11     Q.     I'll represent to you --

12     A.     I'll take your word for it.

13     Q.     Fair.

14     A.     It says, "Assumed accounts  
15    payable \$166 million," which is largely the  
16    same number on 1.1F.

17     Q.     Now, I would like you to set  
18    Schedule 1.1G and 1.1F next to one another,  
19    if you would.

20                  Do you agree, Mr. Kamlani, that  
21    these are two separate schedules appended  
22    to the APA?

23     A.     They are.

24     Q.     And would you also agree,  
25    Mr. Kamlani, that 166.0 is a different

1                   K. Kamlani

2         number than \$166,557,621?

3         A.     I would agree with you that those  
4         are two different numbers.

5         Q.     You can set those aside.

6                   Now, by January 11th,

7         Mr. Kamlani, you understood that the  
8         Debtors were asking Transform to assume up  
9         to \$166 million of accounts payable in  
10         connection with the APA, correct?

11        A.     No.

12        Q.     Mr. Kamlani, will you pull your  
13         deposition transcript out again, please.

14        A.     Let me rephrase the answer.

15                   Why don't you ask the question  
16         again?

17        Q.     By January 11th, you understood  
18         that the Debtors were asking Transform to  
19         assume up to \$166 million accounts payable  
20         in connection with the APA?

21        A.     All right, so without speaking to  
22         the specific day, the Debtors were asking  
23         for us to assume lots of liabilities, of  
24         which that was one of them, at a point in  
25         time very well could have been the day you

1                   K. Kamlani

2 mentioned.

3                 Q. Okay. Thank you. You can set  
4 the deposition transcript aside.

5                 And you, yourself, understood  
6 that the Debtors wanted Transform to assume  
7 those accounts payables precisely because  
8 the Debtors had administrative solvency  
9 concerns, correct?

10                MR. LIMAN: Objection and vague.

11                A. The Debtors had lots of concerns.  
12 What I was specifically told by Bill  
13 Transier was that the Debtors did not want  
14 to assume the risk of holding on to assets  
15 post close that may or may not cover  
16 liabilities to the extent they held those  
17 liabilities.

18                Q. And you also understood,  
19 Mr. Kamlani, that the Debtors had concerns  
20 about the magnitude of the liabilities with  
21 which they might be left after the proposed  
22 sale transaction, correct?

23                MR. LIMAN: Objection. Vague.

24                A. They were concerned that the  
25 assets they had may not be able to cover

1                   K. Kamlani

2                   MS. CROZIER: Exhibit 5, can you  
3                   mark this as 5, please.

4                   (Kamlani Exhibit 5, E-mail dated  
5                   1/11/19, marked for identification, as  
6                   of this date.)

7 BY MS. CROZIER:

8                   Q.     Mr. Kamlani, I'm showing you what  
9                   I've marked Kamlani Exhibit 5, which is a  
10                  January 11, 2019 e-mail from Rajat Prakash  
11                  to a number of individuals, including  
12                  Mr. Lampert, Mr. Riecker and yourself,  
13                  correct?

14                  A.     Yes, there are a number of  
15                  individuals on it, including the ones that  
16                  you mentioned, yes.

17                  Q.     And the subject of the e-mail is  
18                  daily cash flow forecast 1/11/2019,  
19                  correct?

20                  A.     Correct.

21                  Q.     And you received these daily cash  
22                  flow forecasts daily in the post-petition  
23                  period, correct?

24                  A.     Yes.

25                  Q.     Now, I'd like to direct your

1                   K. Kamlani

2                   attention to the key callouts section of  
3                   the e-mail.

4                   Do you see that?

5                   A.     I do.

6                   Q.     And look at the very last black  
7                   bullet in that section.

8                   Do you see that?

9                   A.     I do.

10                  Q.     It reads, "The total AP balance  
11                 beginning 1/11/2019 is" -- merch 123.9  
12                 million and non-merch 50.6 million.

13                  Do you see that?

14                  A.     I do.

15                  Q.     Now merchandise -- to be clear,  
16                 merch refers to merchandise-related  
17                 accounts payable, correct?

18                  A.     Yes.

19                  Q.     And you understood that on  
20                 January 11, 2019?

21                  A.     I did.

22                  Q.     And non-merch refers to  
23                 non-merchandise-related accounts payable?

24                  A.     Yes.

25                  Q.     And you understood that on

1 K. Kamiani

2 January 11, 2019 as well, correct?

**3** A. Yes.

4 Q. And so you would agree with me  
5 then, Mr. Kamlani, that as of January 11,  
6 2019, the accounts payable that the Debtors  
7 were asking Transform to assume was  
8 composed of a portion of merchandise  
9 related accounts payable and a portion of  
10 non-merchandise-related accounts payable,  
11 correct?

12       A.     Not from this document. There is  
13       nothing in this document at any time then  
14       or now that informed my thinking that  
15       that's what the Debtors were asking us to  
16       assume. The Debtors were asking us to  
17       assume in January, pursuant to the  
18       conversation we just had, to assume a  
19       series of liabilities including accounts  
20       payable. This document has nothing to do  
21       with that in my mind.

22 Q. So you've just testified that in  
23 January the Debtors were asking you to  
24 assume a series of liabilities, including  
25 accounts payable, correct?

1                   K. Kamlani

2       A.     Correct.

3       Q.     And here in the key call-out  
4     section of the daily cash flow forecast,  
5     Mr. Prakash divides the total AP balance  
6     into 123.9 million of merchandise-related  
7     accounts payable and \$50.6 million of  
8     non-merchandise-related accounts payable,  
9     correct?

10      A.     Yes.

11      Q.     Now, merchandise --  
12     non-merchandise-related accounts payable  
13     constitutes payables associated with  
14     services rendered to the company, but for  
15     which the company has not yet paid, is that  
16     correct?

17      A.     Yes.

18      Q.     Isn't it true, Mr. Kamlani, that  
19     as of mid January, you understood that the  
20     \$166 million of accounts payable that the  
21     Debtors had asked the buyer to assume were  
22     related to both merchandise and  
23     non-merchandise-related accounts payable?

24      A.     That was their request, yes.

25      That was their ask. It's not ultimately

1                   K. Kamlani

2       what was agreed to, but it was their ask.

3                   MS. CROZIER: Move to strike the  
4                   nonresponsive portion of that answer.

5                   Q. Now notwithstanding everything we  
6                   have just discussed, Mr. Kamlani --

7                   A. Can I just ask my lawyer a  
8                   question for a minute since you haven't  
9                   asked a question?

10                  MR. LIMAN: Yes. There's no  
11                  question pending.

12                  THE WITNESS: Well, I can ask the  
13                  question to both. If I provide an  
14                  answer, it's totally fine for them to  
15                  strike and keep the first three words  
16                  and strike the last four words? I  
17                  mean, how does this work?

18                  MR. LIMAN: That's up to the  
19                  judge. Give your complete answer.  
20                  Let them make whatever noises that  
21                  they want to make. That's up to them.  
22                  It's their time if they want to put  
23                  stuff on the record.

24                  THE WITNESS: That's fine.

25                  A. I apologize.

1                   K. Kamlani

2                 A. I have no idea what -- well,  
3 according to this schedule, yes, as of  
4 January 7th, this is what they had in  
5 order -- correct, that would be accurate.

6                 Q. Okay.

7                   And were Transform to take  
8 delivery of all of this ordered inventory  
9 and only assume payment obligations with  
10 respect to \$166 million of it, that would  
11 leave the Debtors with a \$557,621 bill  
12 representing zero assets, correct?

13                A. It would.

14                Q. And that wouldn't help with  
15 administrative solvency concerns, would it,  
16 Mr. Kamlani?

17                A. In that very specific example,  
18 no, it would not.

19                Q. Mr. Kamlani, because the buyer  
20 disputes that it's obligated to assume both  
21 up to \$166 million in respect of other  
22 payables and all payment obligations with  
23 respect to ordered inventory, has it ceased  
24 paying accounts payable that it beliefs to  
25 be the Debtors' responsibility?

1                   K. Kamlani

2 dollars, tens of millions of dollars.

3                   So the underlying assumption that  
4 the forecast was going to be right and  
5 something had to be managed in order to hit  
6 a number is not necessarily correct when  
7 every budget they put out every week was  
8 beaten by tens of millions of dollars, week  
9 after week after week.

10          Q.       And your testimony, sitting here  
11 today now, is you had no idea how they were  
12 doing that?

13          A.       I have an idea of how they were  
14 doing that. My idea of how they were doing  
15 that was if they thought they might spend  
16 \$50 million, you put out a budget that says  
17 you're going to spend \$80 million and you  
18 spend \$50 million and you come ahead by \$30  
19 million.

20          Q.       You understood, Mr. Kamlani, that  
21 the Debtors were managing inventory and  
22 payments in order to meet that \$850 million  
23 closing condition, didn't you?

24          A.       Yes.

25          MS. CROZIER: Can you mark this

1                   K. Kamlani  
2       definition of ordered inventory in the  
3       Asset Purchase Agreement is in part that  
4       the sellers have not taken title or  
5       delivery to that inventory prior to the  
6       closing date?

7                   A.     Yes.

8                   Q.     So you would agree that ordered  
9       inventory within the meaning of the APA is  
10      not an asset, correct?

11                  A.     Correct. It's nothing.

12                  Q.     Are you generally familiar,  
13       Mr. Kamlani, with the adequate assurance  
14       deposit that was put in place at the outset  
15       of these Chapter 11 cases to provide  
16       adequate assurance to the Debtors' utility  
17       providers?

18                  MR. LIMAN: Objection to form.

19                  A.     At a very, very high level, I'm  
20       familiar with the Debtors put deposits with  
21       utility companies to make sure that utility  
22       companies continued to provide services to  
23       the business.

24                  Q.     And do you also understand that  
25       in the days before closing, the Debtors

1 K. Kamiani  
2 to figure out what actually exists versus  
3 something that doesn't exist. And what we  
4 found is there is a large part of  
5 receivables on that schedule that, in fact,  
6 do not exist at all. Again, different from  
7 a valuation exercise.

8 Q. You received a list of the  
9 specified receivables that debtors would  
10 deliver at closing as early as January 6,  
11 2019, correct, Mr. Kamlani?

12 A. I can't speak to the specific  
13 date, but I'm sure on that timeframe.

14 Q. And the buyer had an opportunity  
15 to diligence those specified receivables,  
16 isn't that right?

17 A. We did.

18 Q. And at the time the Debtors  
19 estimated -- the Debtors' estimate of  
20 likelihood of recovery with respect to  
21 those receivables was in the aggregate 44  
22 percent.

23 | Do you recall that?

A. That sounds about right.

25 Q. And subsequent to that, the buyer

1                   K. Kamlani

2         developed its own estimate of the  
3         percentage of those specified receivables  
4         that the buyer was likely to recover in the  
5         aggregate, isn't that right?

6         A.       Yes.

7         Q.       And what was that estimate? What  
8         was the buyer's estimate?

9         A.       Depending on the timeframe, it  
10        was in the 60 to 75 percent range.

11        Q.       And how much has the buyer  
12        recovered to date with respect to the  
13        specified receivables?

14        A.       Roughly \$80 million.

15        Q.       And why do you say "roughly"?

16        A.       Because I don't have the number  
17        out to a decimal off the top of my head.

18        Q.       Mr. Kamlani, the buyer understood  
19        that there was a risk associated with  
20        recovering the specified receivables before  
21        it execute the APA, correct?

22        A.       We recognized that there was a  
23        risk with not being able to collect  
24        something that existed. We did not sign up  
25        for the risk to pay for something that did

1                   K. Kamlani  
2                   fruition, that they only sold the assets  
3                   for, let's say, 50-cents on the dollar,  
4                   then they would have had an administrative  
5                   solvency problem to the tune of \$88  
6                   million.

7                   Based on the deal that we struck,  
8                   the excess liability over the assets is  
9                   \$526,000. Having said that, based on the  
10                  way we've always done business, to the  
11                  extent we actually received \$166.5 million  
12                  of assets, we certainly would have paid the  
13                  estate for the incremental \$500,000.

14                  MR. LIMAN: Okay. Nothing  
15                  further. Thank you for your time.

16                  MS. CROZIER: I have one, maybe  
17                  two additional follow-up questions.

18 FURTHER EXAMINATION

19 BY MS. CROZIER:

20                  Q.     Mr. Kamlani, you testified  
21                  earlier that ordered inventory within the  
22                  meaning of the APA was inventory to which  
23                  the sellers had not taken title or  
24                  delivery, correct?

25                  A.     Correct.

1                   K. Kamlani

2       Q.     The Debtors could have canceled  
3     those orders at any time, couldn't they  
4     have?

5       A.     As long as they were operating in  
6     the ordinary course, yes.

7                   MS. CROZIER: That's all I have.

8                   Thank you very much.

9                   THE WITNESS: Thank you.

10                  (Time noted: 11:51 a.m.)

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13

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14                   KUNAL KAMLANI

15

16                  Subscribed and sworn to before me

17                  this \_\_\_\_ day of \_\_\_\_\_, 2019.

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**C E R T I F I C A T E**

**STATE OF NEW YORK**

: ss.

**COUNTY OF NEW YORK )**

7               I, Joan Ferrara, a Notary Public  
8               within and for the State of New York,  
9               do hereby certify:

10 That KUNAL KAMLANI, the witness  
11 whose deposition is hereinbefore set  
12 forth, was duly sworn by me and that  
13 such deposition is a true record of the  
14 testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have  
21 hereunto set my hand this 20th day of

June, 2019. *Joan Juvana*

Joan Ferrara

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----- I N D E X -----

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WITNESS	EXAMINATION BY	PAGE
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KUNAL KAMLANI	MS. CROZIER	6
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	MR. LIMAN	77
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	MS. CROZIER	79
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9

----- EXHIBITS -----

10

EXHIBIT	FOR ID.
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Exhibit 1	Debtors' Second Request for Production of Documents to Transform Holdco, LLC	13
Exhibit 2	Asset Purchase Agreement	19
Exhibit 3	Schedule 1.1F	24
Exhibit 4	Schedule 1.1G	26
Exhibit 5	E-mail dated 1/11/19	31
Exhibit 6	Transform transaction weekly tracking slide deck dated 1/25/19	50
Exhibit 7	E-mail dated 2/4/19	59

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2 DEPOSITION ERRATA SHEET

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Case Caption: In Re: SEARS HOLDINGS  
4 CORPORATION, et al.

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DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of my  
Deposition taken in the captioned matter or  
the same has been read to me, and the same is  
true and accurate, save and except for  
changes and/or corrections, if any, as  
indicated by me on the DEPOSITION ERRATA  
SHEET hereof, with the understanding that I  
offer these changes as if still under oath.

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KUNAL KAMLANI

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Subscribed and sworn to on the \_\_\_\_\_ day of  
22 \_\_\_\_\_, 2019, before me,

23

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Notary Public, in and for the State of

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